

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

NICHOLAS ROWLETT,

Plaintiff,

v.

DERRICK HARMON et al.,

Defendants.

Case No. 2:06-CV-545 DAK

**ORDER FOR OFFICIAL SERVICE OF
PROCESS**

Plaintiff, Nicholas Rowlett, an inmate at the Utah State Prison, filed this *pro se* civil rights suit under [42 U.S.C. § 1983](#). See [42 U.S.C.S. § 1983 \(West 2007\)](#). Plaintiff was allowed to proceed *in forma pauperis* under [28 U.S.C. § 1915\(b\)](#). See *id.* [1915](#). This case was referred to the undersigned magistrate judge under [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) and is now before the Court for screening of Plaintiff's Complaint under [28 U.S.C. § 1915\(e\)](#).

ANALYSIS

I. Screening Standard of Review

Under [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#), a court shall dismiss any claims in a complaint filed *in forma pauperis* if they are frivolous, malicious or fail to state a claim upon which relief can be granted. "Dismissal of a *pro se* complaint for failure to state a claim is proper only where it is obvious that the

plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend." Perkins v. Kan. Dep't of Corr., 165 F.3d 803, 806 (10th Cir. 1999). For screening purposes, the Court "presumes all of plaintiff's factual allegations are true and construes them in the light most favorable to the plaintiff." Hall v. Bellmon, 935 F.2d 1106, 1109 (10th Cir. 1991).

Because Plaintiff is proceeding pro se the Court must construe his pleadings liberally and hold them to a less stringent standard than formal pleadings drafted by lawyers. See id. However, "[t]he broad reading of the plaintiff's complaint does not relieve [him] of the burden of alleging sufficient facts on which a recognized legal claim could be based." Id. While Plaintiff need not describe every fact in specific detail, "conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based." Id.

II. Sufficiency of Plaintiff's Allegations

Plaintiff's Complaint alleges cruel and unusual punishment under the Eighth Amendment based on excessive force and alleged sexual assault by medical staff. Plaintiff states that on February 5, 2005, he required medical attention for severe stomach pain. Defendant Harmon, an EMT at the prison, called a doctor who prescribed laxatives and a suppository for Plaintiff.

Harmon asked Plaintiff whether he would insert the suppository himself, to which he replied "no." After Plaintiff again refused to insert the suppository himself officers forcefully escorted Plaintiff into the medical room and forced Plaintiff to bend over at the waist. Harmon then cut off Plaintiff's jumpsuit, pulled down Plaintiff's shorts and inserted the suppository. Plaintiff alleges that while inserting the suppository Harmon "stuck his finger as far as the last knuckle into [Plaintiff's] anus" and that he left it there "for approximately 4 to 5 minutes." (Compl. at 8.) Plaintiff asserts that Defendant's actions amounted to sexual assault and caused him physical and emotional suffering. Plaintiff's Complaint seeks compensatory and punitive damages totaling \$1,010,000.

"Ordinarily, an excessive force claim involves two prongs: (1) an objective prong that asks 'if the alleged wrongdoing was objectively harmful enough to establish a constitutional violation,' and (2) a subjective prong under which the plaintiff must show that 'the officials act[ed] with a sufficiently culpable state of mind.'" [Giron v. Corrections Corp. of America, 191 F.3d 1281, 1289 \(10th Cir. 1999\)](#) (quoting [Hudson, 503 U.S. at 8, 112 S.Ct. 995](#)) (internal quotation marks omitted) (alteration in original). The objective component of an excessive force claim is "contextual and responsive to contemporary standards of

decency." [Hudson, 503 U.S. at 8, 112 S.Ct. 995](#). "The subjective element of an excessive force claim 'turns on whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.'" [Giron, 191 F.3d at 1289](#) (quoting [Whitley, 475 U.S. at 320-21, 106 S.Ct. 1078](#)).

The Tenth Circuit has expressly held that sexual abuse is repugnant to contemporary standards of decency and that allegations of sexual abuse can satisfy the objective component of an Eighth Amendment excessive force claim. [Smith v. Cochran, 339 F.3d 1205, 1212 \(10th Cir. 2003\)](#). Regarding the subjective component, the Tenth Circuit has stated that in cases of sexual abuse or rape "the conduct itself constitutes sufficient evidence that force was used 'maliciously and sadistically for the very purpose of causing harm.'" [Giron, 191 F.3d at 1290](#) (quoting [Whitley, 475 U.S. at 320-21, 106 S.Ct. 1078](#)).

Although Plaintiff offers little factual support for his assertion that Hanson's actions amounted to sexual assault, construing Plaintiff's Complaint liberally the Court finds Plaintiff's allegations sufficient to state an Eighth Amendment claim. Thus, the Court will direct the United States Marshals Service to effect service of process upon Defendant Harmon.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that the United States Marshals Service shall serve a summons and copy of Plaintiff's Complaint upon Derrick Harmon forthwith.

DATED this 8th day of May, 2008.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner". The signature is written in black ink and is positioned above a horizontal line.

Paul M. Warner
United States Magistrate Judge